

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT KARL MAXWELL,)	
)	
	Petitioner,	
v.)	Case No. CIV-08-744-M
)	
UNITED STATES OF AMERICA,)	
)	
	Respondent.	

REPORT AND RECOMMENDATION

Petitioner, appearing *pro se*, has filed a petition for a writ of mandamus pursuant to 28 U.S.C. § 1651(a).

At the time of filing, Petitioner neither paid the required filing fee nor submitted a motion for leave to proceed *in forma pauperis*, contrary to Local Civil Rules 3.2 and 3.3. Consequently, an Order was entered on July 21, 2008, giving Petitioner until August 8, 2008, to cure the deficiencies.

On August 19, 2008, rather than recommending dismissal of the action for failure to comply with the Court's Order, the Court *sua sponte* gave Petitioner additional time until September 5, 2008, in which to cure his deficiencies. Petitioner was advised that failure to comply with the terms of the Order could result in dismissal of this action without prejudice to refiling.

As of this date, Petitioner has not paid the filing fee, filed a motion for leave to proceed *in forma pauperis* or requested an extension of time to do so. Under these circumstances, it is recommended that the action be dismissed without prejudice to the filing of a new action. *See* LCvR3.2 and 3.3.

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objections must be filed with the Clerk of the District Court by October 7th, 2008. *See* LCvR72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

STATUS OF REFERRAL

This Report and Recommendation disposes of all issues referred by the District Judge in this matter.

ENTERED this 17th day of September, 2008.



VALERIE K. COUCH
UNITED STATES MAGISTRATE JUDGE